

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") hereby submits its reply comments in response to the above-captioned Notice of Proposed Rulemaking.¹ The record in this proceeding reflects that a "caller pays" compensation scheme, such as that suggested by PCIA in its opening comments, should be adopted, particularly for toll free calls placed from payphones to paging subscribers.

I. INTRODUCTION

In its *Notice* implementing Section 276 of the Telecommunications Act of 1996 ("1996 Act"),² the Commission sought comment on proposed rules that would "ensure that all payphone owners are compensated for calls originated on their payphones."³ Compensation

¹ FCC 96-254 (June 6, 1996) ("*Notice*"). By *Order* of the Commission, DA 96-983 (June 20, 1996), the reply comment deadline in this proceeding was extended until July 15, 1996.

² Pub. L. No. 104-104, 110 Stat. 56 (1996) *codified at* 47 U.S.C. § 276.

³ *Notice*, ¶ 1.

No. of Copies rec'd
Ltr A B C D E

0710

schemes proposed by the Commission included a "carrier pays" scheme whereby the interexchange carrier ("IXC") that received a payphone-initiated call would compensate the payphone service provider ("PSP") on a per-call basis, and a "set user fee" scheme whereby IXCs would bill end users directly and remit the fee to the PSP.⁴ The Commission tentatively rejected a "caller pays," or "coin-deposit" approach, partly because it believed that such an approach would unduly burden many transient payphone users.⁵

While many parties endorsed both the "carrier pays" and the "set user fee" plans, a significant number of commenters expressed dissatisfaction with both of these schemes, and suggested a "caller pays" approach. As explained in more detail below, such a "caller pays" approach is rational, economically efficient, and equitable. This is particularly true of compensation for toll free calls placed from payphones to paging subscribers. Therefore, the Commission should require the calling party, rather than the called party, to compensate payphone owners.

II. A "CALLER PAYS" COMPENSATION SCHEME IS IN THE PUBLIC INTEREST, ESPECIALLY FOR TOLL FREE CALLS TO PAGING SUBSCRIBERS

In its opening comments, PCIA urged that the Commission adopt a "caller pays" compensation scheme for a number of reasons. First, the called party -- which in the wireless industry often includes a paging subscriber -- has no control over where he or she is located when called. Thus, such subscribers will be unable to control this portion of their

⁴ *Id.*, ¶¶ 25-26.

⁵ *Id.*, ¶ 27.

communications costs. Second, it is economically rational and equitable to charge the party that has chosen to utilize a payphone (*i.e.*, the caller) for the use of that instrument. Finally, consumers do not expect payphone calls, including toll free calls, to be free, and many state regulators have already implemented schemes allowing PSPs to charge for toll free calls.

A number of parties agreed with PCIA that a "caller pays" compensation scheme for all types of calls is both efficient and equitable. For example, Scherers Communications Group stated that PSP compensation should be provided through a per-use fee levied on the payphone user because any "carrier pays" mechanism would strain the resources of all but the three major IXC's, and billing the payphone user at the payphone saves administrative costs and gives PSPs instant compensation.⁶ Further, Excel Telecommunications commented that payphone users should be required to compensate PSPs directly because it is inefficient to require carriers to compensate PSPs, and then recover these costs from their customers.⁷ Finally, One Call advocated a coin deposit approach because as initiators of calls, end users are more in control of their calling location than toll free subscribers.⁸

⁶ Scherers Communications Group, Inc. Comments at 3-4, 6.

⁷ Excel Telecommunications, Inc. Comments at 8

⁸ One Call Communications Inc. Comments at 6. *See also* The Intellicall Companies Comments at 20, 24 (advocating compensating PSPs either through the carrier common line charge, or through a calling party pays scheme); Frontier Corp. Comments at 10-12 (stating that a caller pays scheme is both simple and fair).

Paging providers also joined PCIA in urging that a "caller pays" plan is particularly appropriate for toll free calls placed to paging subscribers.⁹ For example, Paging Network, Inc. ("PageNet") noted that a "carrier pays" plan would be unfair to paging carriers who subscribe to customer toll free numbers, as such carriers could not bill the cost causer, or calling party, for the cost of payphone calls. Further, in the low profit margin paging business, such uncompensated costs are unacceptable.¹⁰ Therefore, PageNet proposed that PSPs be compensated either through a "caller pays" mechanism,¹¹ or through the carrier common line charge.¹² Such compensation schemes are more equitable than the Commission's proposals because they place the burden of supporting payphones on either the cost causer or the public at large -- not on the party that happens to be on the receiving end of an toll free call.

Similarly, AirTouch Paging recommended that the Commission adopt a "set use fee" paid by the calling party in order to compensate PSPs for toll free subscriber calls. Such a compensation plan has a number of advantages. First, it gives the calling party an incentive

⁹ The Commission states that the Telephone Operator Consumer Services Improvement Act ("TOCSIA"), 47 U.S.C. § 226, "expressly prohibits" the adoption of "compensation rules for interstate access code calls that require advance payment by consumers." *Notice*, ¶ 27. The "advance payment" prohibition in TOCSIA is specifically limited to calls routed to non-presubscribed operator service providers, which PCIA believes constitute only a small fraction of 800 subscribers. Adoption of a general "caller pays" scheme is therefore not inconsistent with TOCSIA. *See also* AirTouch Paging Comments at 14 n.52 (stating that CMRS providers are not "providers of operator services" as defined in 47 U.S.C. § 226(a)(9)).

¹⁰ PageNet Comments at 7-8.

¹¹ *Id.* at 11-17.

¹² *Id.* at 4-7.

to choose the most efficient PSP, thereby intensifying payphone competition. Second, this scheme could be easily implemented by requiring that coins be deposited for all toll free subscriber calls, but returned in compliance with TOCSIA if the call is an access call. Finally, as also noted by PageNet, this mechanism requires compensation to be paid to the PSP by the party best able to control its costs -- the payphone user.¹³

III. CONCLUSION

A number of parties suggested that a "caller pays" plan is the fairest and most efficient means of compensating payphone owners for the use of their payphones. Given the inability of paging subscribers to control where they are located when paged, such a plan is particularly appropriate for toll free calls placed from payphones to paging subscribers.

Respectfully submitted,

**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

By: 

R. Michael Senkowski
Eric W. DeSilva
Stephen J. Rosen
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

By: 

Robert L. Hoggarth
Senior Vice President,
Paging and Narrowband
PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561
(703) 739-0300

July 15, 1996

¹³ AirTouch Paging Comments at 13-15. See also Arch Communications Group Comments at 6 (advocating a caller pays compensation scheme for 800 paging numbers).